

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

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ANDY TOBIN

Arizona Corporation Commission
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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS 2016 RENEWABLE
ENERGY STANDARD IMPLEMENTATION
PLAN.

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
THE PROPERTIES OF TUCSON ELECTRIC
POWER COMPANY DEVOTED TO ITS
OPERATIONS THROUGHOUT THE STATE OF
ARIZONA AND FOR RELATED APPROVALS.

DOCKET NO. E-01933A-15-0239

DOCKET NO. E-01933A-15-0322

**TEP'S OPPOSITION TO EFCA'S
MOTION FOR A PROCEDURAL
CONFERENCE**

Tucson Electric Power Company (TEP) responds in opposition to the Energy Freedom Coalition of America's (EFCA) Motion for a Procedural Conference. EFCA's motion is based on wholly erroneous claims of "prejudice" in other unrelated dockets, which EFCA uses in an attempt to tie the hands of TEP, and potentially other parties. None of EFCA's false allegations withstand scrutiny.

At bottom, EFCA's allegations are simply a complaint that parties have modified their positions in response to testimony and arguments presented by other parties. There is nothing improper about that—to the contrary, it is laudable for parties to reevaluate and modify their positions in response to testimony by other parties. Indeed, that is one of the reasons for the multiple rounds of pre-filed testimony that is at the heart of the rate case process. Taken to its logical conclusion, EFCA's arguments would prevent TEP from agreeing with EFCA

1 recommendations that differ from TEP's filed proposal. The motion is founded on baseless
2 accusations and should be denied.

3 EFCA claims that it "has identified an unfair pattern of shifting rate design proposals filed
4 by utilities in rate case proceedings currently before the Commission." [Motion at 2:10-11]¹.
5 EFCA first points to the pending UNS Electric rate case, arguing that "the utility waited until it
6 filed its rebuttal testimony, seven months after filing its rate application, to substantially alter its
7 position and support mandatory three-part rates." [Motion at 2:11-13].

8 In fact, UNS Electric modified its position in response to Staff's direct testimony proposing
9 mandatory three-part rates. This is part of the normal give-and-take of the rate case process, where
10 parties respond to each other's testimony. Eventually, UNS Electric dropped its request in
11 response to additional testimony and public input. Was that somehow improper as well? Of
12 course not—it is responsible and appropriate for parties to adjust their positions as the evidence
13 and the case develop throughout the course of a rate case.

14 However, ECFA seems to imply that the issue of three-part rates somehow arose
15 unexpectedly. That is not correct. Three-part rates were extensively discussed in the Direct
16 Testimony submitted with UNS Electric's Application. UNS Electric President David Hutchens
17 devoted a large portion of his Direct Testimony to rate design issues (pages 10-16), explaining
18 how the company's rate design proposals are designed to align rates with customer usage of the
19 system as well as enabling UNS Electric to recover its fixed costs. Hutchens explained that "a
20 three-part rate design sends more appropriate price signals, allows customers to reduce their bills
21 by managing their energy consumption through EE or DG, and helps mitigate the DG cost shift by
22 better aligning rates with the way the customers use the Company's electric system." [Hutchens
23 Direct Testimony at 10:17-21].

24 In addition, UNS Electric witness Dallas Dukes devoted an entire section of his Direct
25 Testimony to "Three Part Rate Proposals." [Dukes Direct Testimony at pages 24 to 27]. Mr.
26 Dukes explained UNS Electric's proposed three-part rates in detail, and he also explained how the
27

¹ The motion includes two "page 1", so citations are to the actual page number, not the indicated page number.

1 three-part rates will benefit customers. UNS Electric also submitted proposed tariff sheets for its
2 three part rates, as set forth in its proposed Residential Service Demand (RES-01 Demand) and
3 Residential Service Demand Time-of-Use (RES-01 TOU) rates. [Direct Testimony of Craig A.
4 Jones at Exhibits CAJ-3 (clean tariffs) and CAJ-4 (redline tariffs) at tariff sheets 106, 106-1, 106-
5 2, 107, 107-1, 107-2].

6 Staff and numerous Intervenors addressed three-part rates for residential and other
7 customer classes in their direct rate design testimony, demonstrating that all parties were well
8 aware of this issue. Indeed, even AURA's witness, Thomas Alston, discussed his concerns with
9 three-part rates in his testimony. [Alston Direct Testimony at 5-7]. Moreover, The Alliance for
10 Solar Choice submitted testimony by Mark Fulmer, which included sections discussing three-part
11 rates in general, UNS Electric's proposed three-part rates in particular, and a description of why he
12 believes time of use rates are superior to three-part rates. [Fulmer Direct Testimony at 7-15 and
13 18-25]. Likewise, Vote Solar witness Briana Kobor discussed three-part rates at length. [Kobor
14 Direct Testimony at 23; 33-42]. Western Resource Advocates witness Kenneth L. Wilson and
15 SWEEP witness Jeff Schlegel also addressed three-part rates in their testimonies. [Wilson Direct
16 Testimony at 5-11; Schlegel Direct Testimony at 10-11]. Freeport/AECC/Nobel witness Kevin
17 Higgins, FPAA witnesses Lance Jungmeyer and Kent Simer, and Nucor witness Dr. Jay Zarnikau
18 also discusses various issues regarding demand charges (the medium and large general service
19 customers they represent are already on three-part rates with demand charges). And, of course,
20 both RUCO and Staff addressed three-part rates at length in their testimony. [Huber Direct
21 Testimony at 15-24; Broderick Direct Testimony at 2-10; Solganick Direct Testimony at 7-15].
22 Thus, all parties understood that three-part rates for residential customers were at issue in this case.

23 Notably, AURA raised similar complaints in the UNS Electric case. The Administrative
24 Law Judge rejected those arguments:

25 The fact that rate design was going to be a major issue in the UNSE rate case has
26 been known since before the Company filed its application in May 2015. It was
27 also widely known that the UNSE rate case would be the first of several electric
utility rate cases in Arizona. Fourteen parties with diverse interests intervened.
The recommendation that the Commission should adopt mandatory three-part

1 rates for all residential and small commercial customers was proposed in Staffs
2 testimony filed on December 9, 2015. **It is not unusual for utilities to accept the**
3 **recommendations of other parties in Rebuttal Testimony.** The parties to this
4 case have had since at least December 9, 2015, to engage in discovery about the
5 effects of adopting mandatory three-part rates for residential and small
6 commercial customers, which makes AURA's request at this point in the process
7 unreasonable and not in the public interest.

8 [January 29, 2016 Procedural Order in Docket No. E-04204A-15-0142, at pages 3-4 (emphasis
9 added)].

10 Next, EFCA complains about the Trico Electric Cooperative ("Trico") rate case. EFCA
11 objects that "six months after filing its rate case application", Trico "submitted an amendment in its
12 case materially modifying" its proposed rate design, "to include a mandatory fixed monthly demand
13 charge for all residential and small commercial customers." [Motion at 2:14-17]. Trico's
14 amendment specifically stated that "Trico is filing this Amendment in light of recent developments
15 in other dockets pending before the Commission that have occurred since the filing" of the rate
16 application. [Amendment at 1:16-18]. Trico explained the reason for the change in supplemental
17 direct testimony included with the amendment. In the Trico case, direct rate design testimony was
18 not due until three weeks after the Amendment was filed, providing parties significant time to
19 evaluate the revised proposal. EFCA and Staff both filed testimony on May 25 addressing the
20 issue. The hearing does not begin until July 19, providing yet more time to address Trico's revised
21 proposal. Thus, there was no prejudice to ECFA in that case.

22 In any event, TEP has no intention of filing a similar "Amendment". Rather, TEP will
23 review and consider the positions taken by all the parties in direct rate design testimony and will
24 take that into account in formulating its rebuttal testimony.

25 EFCA argues that there is a "disturbing trend whereby utilities seek to make their initial
26 filings a mere place holder as they develop their true proposals at a later date." [Motion at 3:15-17].
27 These allegations are false. Both Trico and UNS Electric submitted comprehensive rate design
testimony with their rate applications. They both then altered those proposals in light of subsequent
developments.

1 EFCA also argues that a “last minute” change would deprive the public of the ability to
2 intervene. But there is no question that rate design is a major question for this case, and indeed, all
3 pending electric rate cases in Arizona. Anyone paying even the slightest attention to any of these
4 rate cases would know that rate design issues are in play, including various proposals for three-part
5 rates. The December 14, 2015 Rate Case Procedural Order ordered that the TEP public notice
6 expressly state that TEP’s application contained “critical and substantial modifications to its rate
7 design and net metering tariff” and encouraged interested parties to intervene. Anyone interested in
8 those issues should have intervened, and indeed, there are an unusually large number of Intervenor
9 in this case; 27 representing diverse interests.

10 EFCA argues that “introducing new witnesses and new studies and reports just days before
11 the hearing” is prejudicial. TEP believes that parties should all adhere to the Procedural Order
12 which sets out a schedule for pre-filed testimony. That schedule allows all parties adequate time to
13 address issues raised by other parties. The procedural schedule adopted in this case is consistent
14 with procedural schedules adopted in prior and pending cases to ensure that final decisions are
15 rendered in accordance with the time clock rules (A.A.C. R14-2- 103.B.11). In addition, in recent
16 cases, the Hearing Division has been very accommodating in allowing discovery to continue, even
17 during the hearing, for parties that claimed a need for additional discovery.

18 In short, EFCA’s complaints are without merit. It is common and appropriate for parties to
19 adjust their positions as the case develops to address positions taken by other parties, as well as
20 address changed circumstances that might arise during the pendency of the rate case, that are often
21 outside of the control of the utility.

22 On the basis of the foregoing, EFCA’s Motion is i) inconsistent with long-standing
23 Commission practice; ii) speculative, and iii) premature. Accordingly, the Motion should be denied.
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RESPECTFULLY SUBMITTED this 21st day of June 2016.

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